INNOCENCE PROJECT

EYEWITNESS IDENTIFICATION REFORM

Mistaken Identifications Are the Leading Factor in Wrongful Convictions

Mistaken eyewitness identifications contributed to 72% of the 321 wrongful convictions in the United States overturned by post-conviction DNA evidence. In Montana, eyewitness misidentification contributed to 2 of 3 wrongful convictions proven by DNA evidence, including the case of Jimmy Ray Bromgard, who spent nearly 15 years in prison for a crime he did not commit. Bromgard's wrongful conviction settlement cost the state nearly $4 million, underscoring that prevention of witness misidentification serves not only the interest of justice, but also the financial interests of states and localities.

How to Improve the Accuracy of Eyewitness Identifications

Fortunately there are cost-neutral techniques that have been proven to reduce the risks of witness misidentifications. These practices have been endorsed by the National Academy of Sciences, the nation's premier independent scientific entity, the International Association of Chiefs of Police, the American Bar Association, and many other organizations.

1. **The "Double-blind" Procedure/ Use of a Blind Administrator:** A "double-blind" lineup is one in which neither the administrator nor the eyewitness knows who the suspect is. This prevents the administrator of the lineup from providing inadvertent or intentional verbal or nonverbal cues to influence the eyewitness to pick the suspect. For agencies in which blind administration is impracticable, an alternative "blinded" option (ie: the folder shuffle method) can be used in which the administrator may know the suspect's identity, but cannot see which photo a witness is viewing at a given time.
2. **Instructions:** Prior to the procedure, witnesses should be instructed that the perpetrator may or may not be in the photo array or lineup and that the criminal investigation will continue regardless of whether a witness makes an identification.
3. **Proper Use of "Non-Suspect" Fillers:** Non-suspect "fillers" used in the live or photo lineup should match the witness's description of the perpetrator. There should be a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos).
4. **Confidence Statements:** Immediately following the lineup procedure, the eyewitness should provide a statement, in his own words, that articulates the level of confidence he has in the identification made.

Benefits of Eyewitness ID Best Practices

- **Innocent individuals** are less likely to be misidentified by witnesses, which could result in a wrongful conviction.
- **Law enforcement** investigations are enhanced when witness identifications are more accurate.
- **Communities are safer** when the real criminal is identified instead of an innocent person. Real perpetrators have been identified in 90 (39%) of the nation's wrongful convictions involving misidentification and were responsible for 98 additional violent crimes (63 rapes, 17 murders, and 18 other violent crimes).

The State of Eyewitness ID Policies in Montana

The Montana Law Enforcement Academy (MLEA), the state's training entity for new recruits, developed an excellent eyewitness identification model policy in 2012 that includes all of the core best practices. However, MLEA does not have authority over policies at local agencies, so while new recruits are being trained in evidence-based eyewitness identification techniques veteran officers are likely still using outdated methods.

Uniform, statewide adoption of eyewitness identification best practices by local and state law enforcement agencies is critical to ensuring that justice is fairly administered throughout Montana.

National Movement In Adopting Best Practices

Ten states have adopted reforms: Connecticut, Maryland, New Jersey, North Carolina, Ohio, Oregon, Rhode Island, Texas Wisconsin, & Vermont. In addition, hundreds of jurisdictions have implemented best practices including large cities such as Denver, CO, Minneapolis, MN, and Santa Clara County, CA, and small towns such as Norfolk, MA.